G. R. S. IX-5]

Previous references.

~~191~~ .

(In ob Courts)

Later references.

50.

File No. R of 914

Serial Nos. 1-2

GENERAL AND REVENUE SECRETARIAT.

Serial Nos.

Part B for

SUBJECT.

Appeal memo to be filed against the judgment in Mr Cave's Case.

Indexed

W

W D 88—GPB—50,000—24-7-16

Draft memo of Appeal to be filed in the Chief Court in Re Mr Karvé's Case. ——

I The State cannot be sued as the Govt. can be regarded as one of the Govt. or any officer can be sued for any act done by him under the powers of the Govt.

I (1) In Mysore the Legislative and Executive functions are vested in the same authority namely the Maha Raja. Therefore no suits in the Civil Courts of the State lie in respect of any acts done by the Maha Raja or by those deriving their authority from him to administer the Executive Government of the State. The remedy in such cases is by Petition.

II (2) As the Civil Procedure Code as introduced into Mysore both in 1877 and 1882 ~~expressely~~ ~~omitted~~ the provision for Suits against the Government.

III As regards suits against Public officers in respect of an official act what would exempt him from liability is not expressely laid down in any law in force in Mysore.

and in the absence of such an express law, the principle which can equitably apply to such cases is that an officer acting within the exercise of his official duty and in accordance with the rules laid down by Competent authority for his guidance shall not be liable to be sued for any consequences of his act. And in the present case the act complained of being one within the range of his duty and in accordance with the Rules of the P. W. D. the defendant is in no way liable.

But if the said act be outside the range of his duty or done otherwise than in accordance with such rules he shall be liable, provided he had acted maliciously or without due care and precaution.

The court of the 1st Instance had no jurisdiction to

entertain the suit, it being opposed to the provisions of Section 229 of Land Revenue Code.

VI The observations of the Lower appellate Court, ~~that~~ the defendant contested the Plff's claim in his official Capacity of the Executive Engineer and not expressely on behalf of the Government shows a difference without a ~~distinction~~ distinction.

VII The Lower ~~appellate~~ Court erred in holding that the question of jurisdiction could not be raised in the Appellate Court for the first time.

VIII Both the Lower courts failed to understand fully the effect and scope of the Plaintiff's claim:—

C. RAJA RAO,
ADVOCATE
AND
PUBLIC PROSECUTOR.

Mysore 27th Sept 1894

Courts
50-94-1

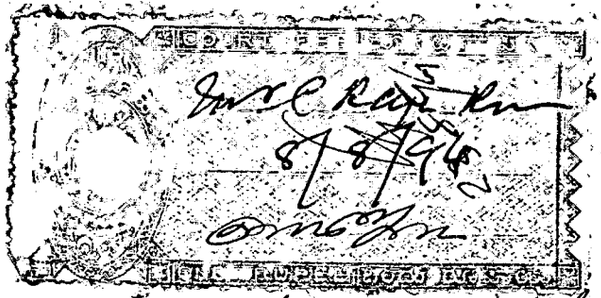
My dear sir

The Dewan was pleased to take me the other day, when I saw him to take from the Office his memo in Mr Kane's case and to prepare a memo for the 2nd appeal. May I therefore request you to be so kind as to send me the papers you may have relating to the case and which may be useful to me in preparing the appeal memo.

Yours very sincerely
C. Raja Rao.

To
K. Krishnaswamy Iyengar Esq,

Rept. 7.9.94



2

In the Court of the District Judge at Mysore.

Appeal No. 16 of 1894.

Appellant
Mr H. V. Karu
Executive Engineer
Mysore Division
Mysore.

Respondent
V/s Ramanujiengar son of
Appachary Krishnacharya
Mysore.

Appeal from the decree of the Court of the Munsiff of Mysore dated the 27th day of November 1893.

Memorandum of Appeal.

Ramanujiengar — Plaintiff
Mr H. V. Karu — Defendant.

Pages 1 to 3

Appellant above named appeals to the Court of the District Judge Mysore against the decree of the Munsiff of Mysore in suit No. 715 of 1894 dated the 27th day of November 1893 for the following reasons namely.

1. The Plaint is bad for vagueness, as it is not clear whether the suit is brought against the P. W. D. Government or the defendant in person.

2. The suit is not maintainable against the defendant either in his official or private capacity.

Copy of Decree in A.S. No. 16 of 1894 on the file of the District Judge's Court Kilinochchi (contd.)

3. The Plff. does not allege gross negligence or malice against the defendant.

4. The Plaintiff has failed to prove his case.

5. The Munsiff has misunderstood and mis-appreciated the evidence of the defendant and his departmental witnesses.

He has erred in over ruling the professional evidence in this case.

7. He has drawn a wrong inference from the fact of 4 bells having been taken down and his remarks in this connection are not justified by facts.

8. The Judgment is opposed to law and evidence.

On the passing of Judgment in this Appeal after hearing Mr. Raja Row Advocate for the Appellant, and Mr. Sreenevasagam Advocate for the Respondent.

It is ordered and decreed that the decree of the lower court be and the same is hereby confirmed and this appeal dismissed.

And it is further ordered and decreed that the Appellant (Defendant) aforesaid do pay to the

Copy of Decree in A.S. No. 16 of 1894 on the file of the District Judge's Court Imgore (Contd)

Respondent (1st Pft) aforesaid the sum of Rs. 5-8-" being the amount of costs incurred by the Respt aforesaid in this Court.

Given under my hand and seal this 22d day of August 1894.

(Sgd) C. Reeves
District Judge

Memorandum of costs incurred in this appeal.

	By the Appellant		By the Respt	
	Rs	As P.	Rs	As P.
Court fee on Memo of Appeal	5	—	—	—
" Power of Attorney	—	8	—	8
" Process	—	1	—	—
Copies of Decree Judgment	1	8	—	—
Advocates fee	5	—	5	—
Cost of adjournment	—	—	—	—
Fees for copying & translating	3	11	8	—
Total	16	11	8	5

(Sgd) C. Reeves
District Judge

A true copy
C. Kanagasabapathy
Sheristadar
Distt Judges Court Imgore

Date of application 23d August 1894
Date when copy was ready for delivery } 4th September 1894
Date of delivery to Mr. C. Raja Row Advocate for Appellant } 7th September 94

C. Kanagasabapathy
Sheristadar
Distt Judges Court Imgore

6

Write here if

Read

Memo from the Secy. to Govt. of Madras, P.W.D., dated 9th Sept. 94 Soliciting instructions with respect to the Judt. of the Civil Dt. Judge of Madras in Appeal Suit No 15 of 1894.

Mr. K.D. Kamma, the Dist. Judge of Madras

Ramanujam Cowdy 50-94-2

Order - No. 27 dated 17th Nov. 1894

The Govt. direct that a Second Appeal be preferred to the Chief Court against the Judt. above referred to and that Mr. Roy a Ross be authorized to file and conduct Such an Appeal at Govt. expense & upon Govt. behalf

7

Stated in the [illegible]
memorandum [illegible]
such [illegible], if
~~the Gov't~~ has, as may
[illegible]

[illegible]

Frch. Fuhr

To Ch. Sup

[illegible]

[illegible]

Note
These cases seem to be by commissioners & not Board of Inquiry

Memo of Second Appeal agt. the Judt

Draft memo of Appeal to be filed in the Chief Court in Re Mr. Karvé's Case

and decree of the Dt. Judge of Mysore in Appeal Suit No 16 of 1899 of Mr. H.V. Karvé - Deft. Appt. vs. Ramanujiengar Plff. Respt.

for,

I The suit cannot lie if it be regarded as one against the government of the State or any officer in respect of an act done by him under the express authority of government;

(a) In Mysore the Ligislative and Executive functions are vested in the same authority namely the Maha Raja and no suits in the civil courts of the state can lie in respect of any acts done by the Maha Raja or by those deriving their authority from him to administer the Executive government of the State, the remedy in all such cases being by Petition to the Sovereign authority,

and (b) the Civil Procedure Code as introduced into Mysore both in 1877 and 1882 intentionally omits provisions for suits against the government

~~excluded~~ omitted.

II Again as regards suits against Public officers in respect of an official act

(1)

act not coming within the scope of ~~the 1st~~ I above Para what would exempt him from liability is not ~~expressly~~ laid down in any written law in force in Guyana, and in the absence of such an express Law, the principles which can equitably apply to such cases are (a) That a Govt officer ~~is that an officer~~ acting within the exercise of his official duty and in accordance with the Rules laid down by competent authority for his guidance ~~should~~ is not ~~be~~ liable to be sued for any consequences of his act: ~~that~~ (b) That even if such act be outside the range of his duty or opposed to the Rules prescribed for his guidance, he is liable only if he has acted maliciously or without due care & precaution.

In the present case the act complained ~~of being~~ was one within the range of ~~his~~ the Govt Official duty and in accordance with the Rules of the ~~Govt~~ Public Works Dept of the Govt ~~the defendant, is in no way liable.~~ and

Even if the said act ~~should be considered to be~~ was outside the range of his duty or done otherwise than in accordance with ~~such~~ prescribed rules, ~~he could be liable, only if he had~~ they acted maliciously or without due care and precaution, and this is not made out in the present case.

there was neither malice nor want of due care or and precaution on the Dept's part, and therefore the Dept is not liable

IV. The court of the 1st Instance had no jurisdiction to entertain the suit, it being

opposed to the provisions of Section 229 of Land Revenue Code.

V VI. The relevancy or bearing of the observations of the Lower appellate court in support of the admissibility of the Plff's suit, that the defendant contested the Plff's claim in his official capacity of the Executive Engineer and not expressely on behalf of the government, ~~that~~ are not clear and apparently introduce a distinction where none exists.

V ~~VII~~. The Lower appellate court erred in holding that the question of jurisdiction could not be raised in the appellate court for the first time.

V II ~~VIII~~. Both the Lower courts failed to understand fully the effect and scope of the Plaintiff's claim:—

III. The Suit and it Appeal are the sole judges of the kind of grounds the irrigation Rights & the question to any Government land changed with wet (or rice) rates of Assessment & No Civil Court has jurisdiction to try such a question - Both the Lower Courts have failed & appreciate the effect & scope of the Plff's claim nor the wide issues involved —

Ceylon
Public Pros

Let this be recopied
at once and printed
first proofs that be
sent me & Mr Rayleigh
Rev simultaneously

10/11/94

Proceedings of the Government of His Highness the Maharaja of Mysore, (General),—dated 17th November 1894.

(*b*) The Civil Procedure Code as introduced into Mysore both in 1877 and 1882 intentionally omits provision for suits against the Government.

II. Again as regards suits against Public Officers in respect of an official act not coming within the scope of Para I above, what would exempt him from liability is not laid down in any written law in force in Mysore, and in the absence of such an express Law, the principles which can equitably apply to such cases are—

(*a*) That a Government Officer acting within the exercise of his official duty and in accordance with the Rules laid down by competent authority for his guidance is not liable to be sued for any consequences of his act, and

(*b*) That even if such act be outside the range of his duty or opposed to the Rules prescribed for his guidance, he is liable only if he has acted maliciously or without due care and precaution.

In the present case the act complained was one within the range of the Defendant's official duty and in accordance with the Rules of the Public Works Department of the Government and even if the said act was outside the range of his duty or done otherwise than in accordance with prescribed rules, there was neither malice nor want of due care and precaution on the Defendant's part, and therefore the Defendant is not liable.

III. The Government and its Officers are the sole judges of the kind and quantity of the irrigation supply to be given to any Government land charged with wet (or rice) rates of assessment and no Civil Court has jurisdiction to try such a question. Both the Lower Courts have failed to grasp the tenure on which unalienated wet land is held by an occupant, and the limits of the Defendant's duty for control and regulation of Irrigational water for the service of such land.

IV. The observations of the Lower Appellate Court, in support of the admissibility of the Plaintiff's suit, that the Defendant contested the Plaintiff's claim in his official capacity of Executive Engineer and not expressly on behalf of the Government, (the bearing of which is far from clear) apparently introduce a distinction where none exists.

V. The Court of the first instance had no jurisdiction to entertain the suit, it being opposed to the provisions of section 229 of the Land Revenue Code.

VI. The Lower Appellate Court erred in holding that the question of jurisdiction could not be raised in the Appellate Court for the first time.

VII. The Appellant prays for a reversal of the decrees of the Lower Courts, with an award to him of costs throughout.

19

Proceedings of the Government of His Highness the Maharaja of Mysore, (General),—dated 17th November 1894.

READ—

Memo from Secretary to Government of Mysore, D. P. W., dated 4th September 1894, soliciting instructions with reference to the judgment of the District Judge of Mysore in Civil Appeal Suit No. 16 of 1894.

Mr. V. H. Karve, Executive Engineer, Mysore.
Vs.
Ramanujaiengar.

No. 27—D. H. O, DATED CAMP MYSORE, 17TH NOVEMBER 1894.

ORDER THEREON.—The Government direct that a Second Appeal be preferred to the Chief Court against the judgment above referred to, and that Mr. Raja Rao be authorized to file and to conduct such an appeal at Government expense and upon the grounds stated in the appended Memorandum and upon such other grounds, if any, as may be considered necessary.

C. SRIKANTESVARA AIYAR,
for Chief Secretary.

To—The Chief Engineer in Mysore.
The Government Advocate.
The Public Prosecutor, Mysore.
The Deputy Comr, Mysore Dist

Memo of main grounds of second appeal against the Judgment and Decree of the District Judge of Mysore, in Appeal Suit No. 16 of 1894.

Mr. V. H. Karve-Defendant (Appellant).
Vs.
Ramanujaiengar-Plaintiff (Respondent).

I. The suit cannot lie if it be regarded as one against the Government, or any Officer of the Government in respect of an act done by him under the express authority of the Government, for—

(*a*) In Mysore the Legislative and Executive functions are vested in the same authority, namely, the Maharaja; and no suits in the Civil Courts of the State can lie in respect of any acts done by the Maharaja or by those deriving their authority from Him to administer the Executive Government of the State, the remedy in all such cases being only by petition to the Sovereign authority, and

1894

GOVERNMENT OF MYSORE

GENERAL

PROCEEDINGS.

Dated Camp Mysore, 17*th November* 1894.

No. 27.
D. H. O.

Directing that a second appeal be preferred against the judgment of the District Judge of Mysore in Civil Appeal Suit No 16 of 1894 and that Mr. Raja Rao, Public Prosecutor, Mysore, be authorized to file and conduct the same.

Government Branch Press, Mysore.—22.11.94.—120